

JACK NORTH AND PATRICK M. MULLIN
ATTORNEYS AT LAW

HURCO LTD. OF LONDON
LONDON, ENGLAND

PRIVILEGE FOR WRIT OF HABEAS CORPUS
IN THE SUPREME COURT OF MINNESOTA AND OTHER
SUPPORT THEREON

JOHN F. HANCOCK
Counsel for Defendant

INDEX

SUBJECT INDEX

	Page
Petition for writ of certiorari.....	1
Foreword	1
Opinion of the court below	2
Summary statement of the matter involved.....	2
Jurisdiction of this Court.....	11
Questions presented	12
Reasons relied on for the allowance of the writ ..	15
Prayer for writ	19
Brief in support	21
Opinion of the court below	21
Statement of the case	21
Specifications of error to be urged.....	21
Summary of the argument	22
Argument	26

CASES CITED

<i>Carpenter v. Strange</i> , 141 U. S. 87.....	24, 30
<i>Chicago, Rock Island & Pac. Ry. v. Schendel</i> , 270 U. S. 611	12, 24, 26, 30, 31, 32
<i>Christmas v. Russell</i> , 5 Wall. 290	23, 28
<i>Clarke v. Clarke</i> , 178 U. S. 186	26, 33
<i>Equitable Life Assur. Soc. of U. S. v. Pool</i> , 145 S. W. (2d) 25	23, 28
<i>Gates v. Mortgage Loan & Inv. Agency</i> , 139 S. W. (2d) 19	24, 30, 31
<i>Hood v. McGhee</i> , 237 U. S. 611.....	26
<i>Huntington v. Atrill</i> , 146 U. S. 661	26, 33
<i>Irvan v. Bounds</i> , 170 S. W. (2d) 674.....	23, 29
<i>Magnolia Petroleum Co. v. Hunt</i> , 320 U. S. 430, 12, 23, 26, 28, 32, 33	
<i>Maltz v. Jackoway-Katz Cap Co.</i> , 82 S. W. (2d) 909 ..	23, 29
<i>Milwaukee County v. White Co.</i> , 296 U. S. 268	26
<i>Olmstead v. Olmstead</i> , 216 U. S. 386.....	26, 33
<i>Riley v. New York Trust Co.</i> , 315 U. S. 343.....	26, 32

	Page
<i>Roche v. McDonald</i> , 275 U. S. 449	23, 28
<i>Rutherford v. Tobin Quarries</i> , 82 S. W. (2d) 918,	
23, 24, 26, 29, 30	
<i>State ex rel. v. Fulbright</i> , 169 S. W. (2d) 59,	
23, 24, 26, 29, 30	
<i>U. S. v. California & Oregon L. Co.</i> , 192 U. S. 355	26, 32
<i>Werlein v. New Orleans</i> , 177 U. S. 390	26, 33
<i>Williams v. State of North Carolina</i> , 317 U. S. 287 ..	12, 26
<i>Wisconsin v. Pellican Ins. Co.</i> , 127 U. S. 265	26, 33

CONSTITUTION OF UNITED STATES CITED

Section IV, Article 1, Constitution of the United States	11, 15, 16, 17, 19, 21, 22, 23, 24, 25, 26, 27
--	--

STATUTE CITED

Laws Arkansas 1939, Act 319, Sec. 25 (a)	23, 28
--	--------

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1946

No. 575

JACK GORUM AND NATIONAL MUTUAL CASUALTY
COMPANY,

vs.

Petitioners,

RUBY O. LOUDENSLAGER AND CHARLOTTE
LOUDENSLAGER

**PETITION FOR WRIT OF CERTIORARI TO THE
SUPREME COURT OF MISSOURI**

*To the Honorable Chief Justice and Associate Justices of
the Supreme Court of the United States:*

Come now Jack Gorum and National Mutual Casualty Company and respectfully petition this Honorable Court to grant a writ of certiorari to review the opinion and judgment of the Supreme Court of Missouri *en banc*, rendered and entered on the 10th day of June, 1946, in the case lately pending in said Supreme Court of Missouri *en banc* styled Ruby O. Loudenslager and Charlotte Loudenslager, respondents, *vs.* Jack Gorum and National Mutual Casualty Company, appellants, being Cause No. 39532 of

the causes on the docket of said Supreme Court of Missouri *en banc*, said judgment and opinion affirming the judgment of the Circuit Court of Cedar County, Missouri, which said Circuit Court judgment affirmed the award of the Missouri Workmen's Compensation Commission, in the sum of \$9,521.00, in favor of respondents and against petitioners (R. 234 C, D, E) which said judgment of the Supreme Court of Missouri *en banc* became final on the 8th day of July, 1946, by the overruling by that Court of petitioners' motion for rehearing (R. 255).

Opinion of the Court Below

The opinion of the Supreme Court of Missouri *en banc* in said cause of Ruby O. Loudenslager and Charlotte Loudenslager, respondents, *vs.* Jack Gorum and National Mutual Casualty Company, appellants, which petitioners here seek to have reviewed, is reported in 195 S. W. (2d) at page 498, and appears on page 246 to page 253 of the transcript of the printed record filed herewith. Said opinion has not yet been published in the official State Reports.

Summary Statement of the Matter Involved

This proceeding was commenced by the filing of a claim for compensation before the Missouri Workmen's Compensation Commission by Ruby O. Loudenslager for herself and on behalf of her minor daughter, Charlotte Loudenslager, on the 17th day of December, 1941, seeking an award of compensation under the Missouri Workmen's Compensation Act on account of the death of R. Guy Loudenslager on the theory that he was an employee of Jack Gorum under a contract of hire entered into in the State of Missouri (R. 2-6). R. Guy Loudenslager was the husband of Ruby O. Loudenslager and the father of Charlotte Loudenslager (R. 4).

Petitioner Jack Gorum was engaged in the trucking business under the name of Arkansas Traveler Truck Lines, at Bentonville, Arkansas (R. 3). Petitioner National Mutual Casualty Company carried workmen's compensation insurance on Jack Gorum's employees in the State of Arkansas. R. Guy Loudenslager owned a refrigerated tractor trailer truck, which he was using to haul freight for Jack Gorum under a contract, whereby he was paid a percentage of the gross freight charges for the freight he hauled (R. 101, 154). Jack Gorum's operations extended into Missouri through Arkansas and into Mississippi and Louisiana (R. 99-100).

On June 18th, 1941, R. Guy Loudenslager was driving his truck north on U. S. Highway 65, just outside of Pine Bluff, in the State of Arkansas, returning from a trip to Mississippi, hauling freight under contract with Jack Gorum (R. 234 D). His truck collided with another truck on the highway and R. Guy Loudenslager sustained injuries from which he died the following day at Pine Bluff, Arkansas (R. 234 D).

On July 23rd, 1941, Ruby O. Loudenslager filed a claim for herself and on behalf of her minor daughter, Charlotte Loudenslager, respondents herein, before the Arkansas Workmen's Compensation Commission, to recover compensation under the Arkansas Workmen's Compensation Act on account of the death of R. Guy Loudenslager, on the ground that he was an employee under a contract of hire with Jack Gorum and died as a result of accidental injuries arising out of and in the course of his employment—Employer's and Insurer's Ex. 1 (R. 22, 297). This claim was heard before the Arkansas Workmen's Compensation Commission on December 15th, 16th, and 17th, 1941, and was at that time continued until January 12th, 1942, for further hearing, at the request of claimants (R. 26). On January

12th, 1942, said proceeding was continued to January 24th, 1942—Claimants' Exhibit C (R. 29, 262). The cause was taken as submitted and an award was entered February 16th, 1942—Employer's and Insurer's Exhibit 1 (R. 22, 290-297).

The Arkansas Award

The award was entered on the merits of said claim by the Arkansas Workmen's Compensation Commission, finding that R. Guy Loudenslager was not an employee of Jack Gorum and that he was an independent contractor, and finding that the contract under which he was working at the time of his injury was entered into in the State of Arkansas—Employer's and Insurer's Exhibit 1 (R. 22, 290, 296). Compensation was denied because claimants (respondents herein) failed to prove that deceased was an employee under a contract of hire. Compensation was not denied on the ground that the Arkansas Compensation Law afforded no remedy.

No appeal was taken from this award of the Arkansas Workmen's Compensation Commission—Employer's and Insurer's Exhibit 1 (R. 22, 306), and the award became final and conclusive between the parties in the State of Arkansas thirty days thereafter—Section 25 (a) of Act No. 319, Acts of the General Assembly for the year 1939, State of Arkansas (R. 14, 19).

Thereupon, on February 5th, 1942, petitioner Jack Gorum in his answer to the claim for compensation filed before the Missouri Workmen's Compensation Commission, pleaded, alleging that all of the issues before the Missouri Workmen's Compensation Commission had been finally adjudicated by the Arkansas Workmen's Compensation Commission (R. 7-9).

On May 17th, 1943, petitioner National Mutual Casualty Company, in an amended answer filed before the Missouri

Workmen's Compensation Commission to the claim for compensation of Ruby O. Loudenslager and Charlotte Loudenslager, pleaded the final adjudication and award by the Arkansas Workmen's Compensation Commission of the issues presented in the claim filed before the Missouri Workmen's Compensation Commission (R. 9, 10-11). The claim before the Missouri Workmen's Compensation Commission was heard on February 22nd, 23rd, and 24th, 1944, at Joplin, Missouri, by a Referee of the Missouri Workmen's Compensation Commission (R. 12). Petitioners, Jack Gorum and the National Mutual Casualty Company, introduced a duly authenticated copy of the record of the Arkansas Workmen's Compensation Commission in evidence, showing the final award of that Commission, Employer's and Insurer's Exhibit 1 (R. 22, 290-307).

The Arkansas Workmen's Compensation Law was introduced in evidence before the Missouri Workmen's Compensation Commission (R. 14, 15-21). That law provides:

"Sec. 2. Definitions. As used in this chapter

(a) 'Employer' means any individual, partnership, association or corporation carrying on any employment
 • • • (R. 14, 15).

(b) 'Employee' means any person, including a minor, whether lawfully or unlawfully employed, in the service of an employer under any contract of hire or apprenticeship, written or oral, express or implied • • •
 (R. 14, 15).

(c) 'Employment' means every employment carried on in the state in which five or more employees are regularly employed in the same business or establishment, except (1) domestic service, (2) agricultural farm labor, (3) institutions maintained and operated as public charities, (4) the State of Arkansas and each of the political subdivisions thereof, (5) any person engaged in the vending, selling or offering for sale or

delivering directly to the general public, any newspapers, magazines, or periodicals • • • (R. 14, 15).

(f) 'Injury' and 'Personal Injury' shall mean accidental injury or death arising out of and in the course of employment • • •" (R. 14, 15).

Section 3 provides that every employer and employee, unless specifically exempted, is subject to the provisions of the Act (R. 14, 16).

Section 4 provides that the remedy granted to an employee under the Act is exclusive of all other rights and remedies of such employee (R. 14, 16).

Section 5 provides that every employer subject to the Act shall secure compensation to his employees for disability or death from injury arising out of and in the course of the employment (R. 14, 16).

Section 15 (c) (3) provides for payment of compensation for death to the widow and children (R. 14, 17).

Section 25 "Review of Compensation Order. (a) A compensation order shall become effective when filed in the office of the commission as provided in Section 23, and, unless reversed or modified on appeal as provided in sub-division (b) of this Section, shall become final at the expiration of the 30th day thereafter" (R. 14, 19).

The Missouri Workmen's Compensation Law (Sec. 3689-3766 R. S. Mo. 1939) provides:

Section 3690 provides that every employer and employee, unless otherwise provided, shall be conclusively presumed to have elected to accept the provisions of the compensation law, unless prior to the accident he shall have filed with the Commission a written notice of rejection of the law.

Section 3691 provides that if both employer and employee shall accept the provisions of the law, the employer shall be liable to furnish compensation for personal injury or death of the employee by accident

arising out of and in the course of his employment, and provides that the remedy is exclusive of all other remedies.

Section 3694 (a) defines an employer as "Every person, partnership, association, corporation, trustee, receiver, the legal representatives of a deceased employer, using the service of another for pay * * *"

Section 3695 (a) defines an employee as "Every person in the service of an employer, * * * under any contract of hire, express or implied, oral or written, or under any appointment or election * * *"

Section 3709 (d) provides for compensation to the widow of an employee who dies as a result of accidental injuries arising out of and in the course of his employment.

Section 3700 (b) provides compensation for injuries or death occurring outside Missouri under a contract of employment made in Missouri unless the contract shall otherwise provide.

The Missouri Law covers independent contractors engaged on or about the premises of the employer, Sec. 3698 R. S. Mo. 1939, but excludes independent contractors who are engaged in driving trucks on public highways not under the control of the employer (See Brief 33). The Arkansas Law cover only employees (See Brief 30).

The Missouri Award

At the conclusion of the hearing on February 24th, 1944, the Referee of the Missouri Workmen's Compensation Commission took the case as submitted (R. 232), and entered an award on the 8th day of March, 1944, finding that R. Guy Loudenslager was an employee of Jack Gorum under a contract of employment made in the State of Missouri, and awarded claimants compensation in the sum of \$9,521.00 (R. 232 A, B, C).

Thereupon Jack Gorum, on March 10th, 1944, duly filed his application for review (R. 234 A), and National Mutual Casualty Company, on March 14th, 1944, duly filed its application for review (R. 234 B), and said proceeding was taken as submitted on review on March 10th and March 14th, 1944, by the full Missouri Workmen's Compensation Commission (R. 234 C), and said Missouri Workmen's Compensation Commission entered a final award on August 11th, 1944, finding that the deceased R. Guy Loudenslager was an employee of Jack Gorum and that the contract of employment was entered into in the State of Missouri, and awarded claimants compensation in the sum of \$9,521.00 (R. 234 C, D, 235).

Thereupon, on August 22nd, 1944, Jack Gorum and National Mutual Casualty Company duly filed their notice of appeal from the award of the Missouri Workmen's Compensation Commission to the Circuit Court of Jasper County, Missouri (R. 236 A); and thereafter, on September 5th, 1944, the Secretary of the Missouri Workmen's Compensation Commission transmitted said record, together with certificate on appeal, to the Circuit Court of Jasper County, at Joplin, Missouri, and said transcript on appeal was duly lodged in the Circuit Court of Jasper County on September 6th, 1944 (R. 236 B, 359). Said cause was duly transferred from Jasper County to Cedar County, Missouri, because of the interest of the judges as counsel in said cause (R. 237).

Thereafter, on the 17th day of November, 1944, said cause was heard on appeal in the Circuit Court of Cedar County and an amended judgment entry was made (R. 237-239), affirming the award of the Missouri Workmen's Compensation Commission. Thereafter, on December 19th, 1944, Jack Gorum and National Mutual Casualty Company filed their affidavit for appeal, and on the same day and during the November Term, 1944, of the Circuit Court of Cedar County, and at the same term at which the judgment had been entered,

said court made an order granting an appeal to the Supreme Court of Missouri (R. 1, 2), and fixed the appeal bond at \$15,000.00 (R. 240). Thereafter, on December 23rd, 1944, the appeal bond was filed and duly approved (R. 240). Thereafter, on March 13th, 1945, the Circuit Court of Cedar County made an order extending the time to file the transcript on appeal in the Supreme Court of Missouri from March 19th, 1945, to April 19th, 1945 (R. 240), and on April 17th, 1945, said Court entered an order extending the time to file the transcript on appeal in the Supreme Court from April 19th, 1945, to June 19th, 1945 (R. 241). It was stipulated between the parties, appellants and respondents, that certain exhibits would be filed in the Supreme Court of Missouri under separate cover under Rule 1.05 of the Rules of the Supreme Court of Missouri (R. 241-2).

The case on appeal was duly assigned to Division 1 of the Supreme Court of Missouri, and was argued and submitted to said Court on January 8th, 1946. Thereafter, on February 11th, 1946, Division 1 of the Supreme Court of Missouri entered a judgment and filed its opinion affirming the award of the Missouri Workmen's Compensation Commission (R. 244). On February 26th, 1946, within the time allowed by Rule 1.19 and 2.02 of the Supreme Court of Missouri, petitioners filed their motion for rehearing and to transfer said cause to the Supreme Court of Missouri *en banc*. Said motion for rehearing and to transfer to the Court *en banc* was overruled on March 11th, 1946, and the Court, on its own motion, transferred said cause to the Court *en banc*, under Section 4 of the Amendment of 1890 to Article VI of the Constitution of Missouri (Rev. St. Mo. 1939, Vol. 1, p. 127c), because a Federal question was involved (R. 244). The case was set for argument and was argued before the Supreme Court of Missouri *en banc* on May 23rd, 1946, and was on that day taken by the Court as submitted. On June 10th, 1946, the Supreme Court of Mis-

souri *en banc* entered its judgment, affirming the award of the Missouri Workmen's Compensation Commission and adopting the opinion of Division 1 of the Supreme Court of Missouri theretofore filed in said cause (R. 245). On June 22nd, 1946, within the time allowed by Rule 1.19 of said Court, petitioners filed in said Court their motion for rehearing (R. 253), which was by the Court overruled by an order entered of record on July 8th, 1946 (R. 255).

Opinion of Supreme Court of Missouri

The Supreme Court of Missouri *en banc* held in its opinion that the Arkansas Workmen's Compensation Commission had jurisdiction to make the order refusing compensation (R. 248), and further held that the award of the Arkansas Workmen's Compensation Commission was not subject to collateral attack (R. 248). The Supreme Court of Missouri held that the Missouri Workmen's Compensation Commission was not required to give full faith and credit to the award of the Arkansas Workmen's Compensation Commission because the Arkansas award found that claimants were not entitled to anything under the Arkansas Act (R. 249), and because the Workmen's Compensation Acts of Missouri and Arkansas are different in many respects and, therefore, the finding of the Arkansas Commission, that claimants had no remedy to recover anything for Loudenslager's death under the Arkansas Act, does not mean that they could not be given a remedy therefor by the Missouri Act (R. 249).

Judgment of Supreme Court of Missouri

The Supreme Court of Missouri entered judgment affirming the judgment of the Circuit Court of Cedar County, Missouri (R. 245).

Jurisdiction of This Court

The jurisdiction of this Court is based on Section 237 of the Judicial Code as amended and reformulated by the Act of February 13th, 1925, C. 229, Section 237, 43 Stat. 937, Title 28, U. S. C. A., Sec. 344 (b), providing that it shall be competent for this Court, by certiorari, to require that there be certified to it for review and determination any cause wherein a final judgment or decree has been rendered by the highest court of a state in which a decision could be had, where any title, right, privilege, or immunity specially set up or claimed by either party under the Constitution, or any treaty or statute, of, or commission held, or authority exercised under, the United States.

The judgment of the Supreme Court of Missouri *en banc* sought to be reviewed was entered on June 10th, 1946 (R. 245). A motion for rehearing was filed in said Court on June 22nd, 1946, within the time prescribed by the rules of the Supreme Court of Missouri (R. 253), and said motion of petitioners for rehearing of said cause was denied by the Supreme Court of Missouri *en banc* on July 8th, 1946 (R. 255), which is the date on which the judgment of the Supreme Court of Missouri in said cause became final. The Supreme Court of Missouri *en banc* was the highest court of the State of Missouri in which a decision could be had in said cause, and in said cause petitioners specially set up and claimed a right under Article IV, Section 1 of the Constitution of the United States— See answers to claim for compensation (R. 7-11), Brief in Supreme Court of Missouri (R. 244-5), and motion for rehearing (R. 253-5), which right was denied petitioners by said Supreme Court of Missouri *en banc*.

Petitioners specially pleaded in their answer to the claim for compensation, filed before the Missouri Workmen's Compensation Commission, their right to have the final, con-

clusive award of the Arkansas Workmen's Compensation Commission accepted as a final and conclusive determination of the issues theretofore adjudicated between the same parties by the Arkansas Workmen's Compensation Commission (R. 7-11). Petitioners in their brief in the Supreme Court of Missouri assigned as error the refusal of the Missouri Workmen's Compensation Commission to give full faith and credit to the final Arkansas award and the issues adjudicated therein and duly argued said question before said Court (R. 244-5). The Supreme Court of Missouri, in its opinion, held:

"Therefore, we must find that the Arkansas Commission had jurisdiction to make the order refusing compensation. Nevertheless, we do not think that the Schendel and Magnolia Petroleum Company cases prohibit the award made herein by the Missouri Commission. (R. 248) * * * We, therefore, hold that the Circuit Court properly affirmed the award of the Missouri Workmen's Compensation Commission as to the employer." (R. 251)

The cases thought to sustain the jurisdiction of this Court are:

Magnolia Petroleum Co. v. Hunt, 320 U. S. 430;
Williams v. State of North Carolina, 317 U. S. 287;
Chicago, Rock Island & Pac. Ry. v. Schendel, 270 U. S. 611.

Questions Presented

I

Whether the respondents had one cause of action on account of the death of R. Guy Loudenslager, which, when prosecuted to a valid, final, conclusive award between the parties before the Arkansas Workmen's Compensation Commission, would be entitled to full faith and credit under

Article IV, Section 1 of the Constitution of the United States and the Acts of Congress implementing same, as to all issues that were adjudicated in the Arkansas proceeding and as to all issues that could have been adjudicated in that proceeding, when duly pleaded and proven in a second action between the same parties, seeking an award of compensation on account of the same death before the Missouri Workmen's Compensation Commission, where the Arkansas Workmen's Compensation Law and the Missouri Workmen's Compensation Law both provided for an award of compensation to the widow and minor child of an employee who died as a result of accidental injuries arising out of and in the course of his employment, and both compensation laws define an employee as any person in the service of an employer, under any contract of hire, express or implied, written or oral, and both compensation laws exclude independent contractors driving trucks along public highways, and where the claim adjudicated by the Arkansas Workmen's Compensation Commission was to recover compensation on the ground that deceased was an employee under a contract of hire, and that he died as a result of accidental injuries arising out of and in the course of his employment, in Arkansas, and the Arkansas Workmen's Compensation Commission, after a hearing on the merits, found from the evidence that deceased was not an employee, but was an independent contractor, and the claim before the Missouri Workmen's Compensation Commission was upon the same ground, to-wit: that deceased was an employee under a contract of hire, and that he died as a result of accidental injuries arising out of and in the course of his employment.

II

Whether the findings that deceased was not an employee under a contract of hire, in a final, conclusive adjudication by the Arkansas Workmen's Compensation Commission,

having jurisdiction of the parties and subject matter, brought to recover an award of compensation under the Arkansas Workmen's Compensation Law on the ground that deceased was an employee under a contract of hire, wherein those issues were duly presented by the claim for compensation and answer thereto filed before said Commission, and were duly contested and presented to said Commission for decision by the evidence, are entitled to full faith and credit, under Article IV, Section 1 of the Constitution of the United States in a subsequent proceeding, between the same parties, filed before the Missouri Workmen's Compensation Commission to recover compensation under the Missouri Workmen's Compensation Law on account of the same death on the ground that deceased was an employee under a contract of hire entered into in the State of Missouri, where the prior final award was duly pleaded and proven in the second action.

III

Whether the fact that the Arkansas Workmen's Compensation Law and the Missouri Workmen's Compensation Law differed in many particulars not material to the right to compensation in question would except the valid, final, conclusive award of the Arkansas Workmen's Compensation Commission from the requirements of full faith and credit under Article IV, Section 1 of the Constitution of the United States, when duly pleaded and proven in a second action before the Missouri Workmen's Compensation Commission by the same parties, seeking compensation on account of the same death, and where both claims for compensation were brought on the ground that the deceased was an employee under a contract of hire, and the Arkansas Workmen's Compensation Commission in the first action held that he was not and held that he was an independent contractor, and the Missouri Workmen's Compensation Commission in

the second action held that he was an employee, and both the Arkansas Workmen's Compensation Act and the Missouri Workmen's Compensation Act provide for compensation to a widow and child on account of the death of the employee as a result of an accidental injury arising out of and in the course of his employment, and neither the Arkansas Workmen's Compensation Act nor the Missouri Workmen's Compensation Act authorizes an award of compensation to an independent contractor driving a truck along a public highway, as the deceased was in this case.

Reasons Relied On for the Allowance of the Writ

I

Your petitioners believe that the Supreme Court of the State of Missouri has decided a Federal question of substance in a way probably not in accord with applicable decisions of this Court.

This Court has stated the rule of *res judicata*, as it is applied under Article IV, Section 1 of the Constitution of the United States, as follows:

"The effect of a judgment or decree as *res judicata* depends upon whether the second action or suit is upon the same or a different cause of action. If upon the same cause of action, the judgment or decree upon the merits in the first case is an absolute bar to the subsequent action or suit between the same parties or those in privity with them, not only in respect of every matter which was actually offered and received to sustain the demand, but also as to every ground of recovery which might have been presented. But if the second case be upon a different cause of action, the prior judgment or decree operates as an estoppel only as to matters actually in issue or points controverted, upon the determination of which the judgment or decree was rendered."

The Supreme Court of Missouri held in its opinion that the Arkansas Workmen's Compensation Commission had jurisdiction to make the award it did make, and that such award was not subject to collateral attack, yet said Court denied full faith and credit to that award.

The claim filed before the Arkansas Workmen's Compensation Commission and the claim filed before the Missouri Workmen's Compensation Commission were upon the same cause of action and were between the same parties. Under the above rule, the final Arkansas award was *res judicata* as to all issues that were adjudicated therein, and likewise as to all issues that could have been adjudicated therein. The issue adjudicated by the Arkansas Workmen's Compensation Commission was whether the deceased was an employee or an independent contractor. The Arkansas Workmen's Compensation Commission found that he was not an employee and that he was an independent contractor. The issue before the Missouri Workmen's Compensation Commission was the same, to-wit: whether the deceased was an employee or an independent contractor. The Missouri Workmen's Compensation Commission again litigated this question and found that the deceased was an employee. In so doing, the Missouri Workmen's Compensation Commission violated Article IV, Section 1 of the Constitution of the United States.

II

The terms of the contract under which R. Guy Loudenslager was working on June 18th, 1941, constituted him an employee of Jack Gorum or an independent contractor doing work for Jack Gorum. This issue was presented to the Arkansas Workmen's Compensation Commission by the claim of respondents and by the answer of petitioners. The issue was duly adjudicated by the Arkansas Workmen's

Compensation Commission, and the final, conclusive award of the Arkansas Workmen's Compensation Commission adjudicating this issue was specially pleaded in the answer of Jack Gorum and the National Mutual Casualty Company to the claim for compensation filed before the Missouri Workmen's Compensation Commission. A duly authenticated copy of the record of the Arkansas Workmen's Compensation Commission was introduced in evidence before the Missouri Workmen's Compensation Commission. Petitioners submit that Article IV, Section 1 of the Constitution of the United States, as construed by this Court, required the Missouri Workmen's Compensation Commission to give full faith and credit to this adjudicated issue and to accept the finding of the Arkansas Workmen's Compensation Commission as conclusively establishing the relationship created by the contract under which deceased was working, and prevented the Missouri Workmen's Compensation Commission from again litigating this issue and finding that R. Guy Loudenslager was an employee under a contract of hire with Jack Gorum.

III

Your petitioners believe that the Supreme Court of the State of Missouri *en banc* has decided a Federal question of substance not theretofore determined by this Court, in this, that the Supreme Court of Missouri *en banc* has ruled in its judgment and opinion that the valid, final, conclusive award of the Arkansas Workmen's Compensation Commission is excepted from the requirements of full faith and credit under Article IV, Section 1 of the Constitution of the United States and the Acts of Congress implementing same, because the award of the Arkansas Workmen's Compensation Commission denied respondents a recovery and because there are many differences between the Arkansas

Workmen's Compensation Act and the Missouri Workmen's Compensation Act, although these differences are not found to be pertinent or material to the claim for compensation here involved.

It is believed that this Court should determine what judgments and records of one state are excepted from the requirements of full faith and credit when pleaded in a second action in another state. This Court does not seem to have ever excepted a money judgment or award from the requirements of full faith and credit, and the decisions of this Court seem to establish that no judgment or record of one state will be excepted from the requirements of full faith and credit unless the enforcement of that judgment or record in another state will create a serious conflict with the policy of such other state. The enforcement of the final, conclusive award of the Arkansas Workmen's Compensation Commission in the State of Missouri will work no conflict with the policy of the State of Missouri. This is true because both the Arkansas Workmen's Compensation Act and the Missouri Workmen's Compensation Act apply precisely the same to the right of respondents to compensation on account of the death of R. Guy Loudenslager. Both the Arkansas and the Missouri Workmen's Compensation Acts provide for an award of compensation to the widow and minor child of a deceased employee who dies as a result of accidental injuries arising out of and in the course of his employment, and that was the theory upon which both the Arkansas and Missouri compensation claims were prosecuted. The Arkansas Workmen's Compensation Law and the Missouri Workmen's Compensation Law likewise do not provide for compensation on account of the death of an independent contractor driving a truck along a public highway, as R. Guy Loudenslager was doing in this case, and it appears from the record in this case that respondents sought the same remedy in the proceeding before the Missouri

Workmen's Compensation Commission which they had under the Arkansas Workmen's Compensation Law in the proceeding theretofore adjudicated before the Arkansas Workmen's Compensation Commission. Under the facts found by the Arkansas Workmen's Compensation Commission, no award of compensation could be made under the Missouri Workmen's Compensation Law; and likewise, under the findings made by the Missouri Workmen's Compensation Commission, compensation would be awarded under the Arkansas Workmen's Compensation Law.

Your petitioners believe that the question involved in this case is one of substance because the judgment and opinion of the Supreme Court of Missouri denies your petitioners a Federal right. The petitioners specially pleaded their right to have the final, conclusive award of the Arkansas Workmen's Compensation Commission given full faith and credit in the subsequent action before the Missouri Workmen's Compensation Commission under Article IV, Section 1 of the Constitution of the United States. The judgment of the Supreme Court of Missouri denies your petitioners this right.

Your petitioners believe that the question involved is of importance and should be determined by this Court because it is believed that orderly procedure requires that a cause of action or an issue duly adjudicated by a tribunal having jurisdiction should be conclusive in a second action between the same parties and should not be again litigated in a subsequent action.

Prayer

WHEREFORE, petitioners pray that a writ of certiorari be issued by this Court directed to the Supreme Court of Missouri to the end that said opinion and judgment of the Supreme Court of Missouri *en banc*, in said cause of Ruby

O. Loudenslager and Charlotte Loudenslager, respondents, vs. Jack Gorum and National Mutual Casualty Company, appellants, No. 39,532, be reviewed by this Court, as provided by law, and that upon such review said judgment be reversed, and that petitioners have such other relief as to this Court may seem appropriate.

JOSEPH N. HASSETT,
Attorney for Petitioners,
412 Paul Brown Bldg.,
St. Louis 1, Mo.

BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

Opinion of the Court Below

The opinion of the Supreme Court of Missouri in said cause of Ruby O. Loudenslager and Charlotte Loudenslager, (claimants) respondents, vs. Jack Gorum and National Mutual Casualty Company, (employer and insurer) appellants, which petitioners here seek to have reviewed, is reported in 195 S. W. (2d) 498, and appears on pages 246 to 253 of the transcript of the printed record filed herewith. Said opinion has not yet been published in the official State Reports.

Statement of the Case

The essential facts of the case are fully stated in the petition for writ of certiorari, and in the interest of brevity are not repeated here. Reference will be made to such facts on the points involved in the course of the argument which follows.

Specifications of Error to Be Urged

The Supreme Court of Missouri *en banc*, in its said opinion in said cause, erred:

1. In holding and deciding that the Missouri Workmen's Compensation Commission was not required to give full faith and credit, under Article IV, Section 1 of the Constitution of the United States, to the final, conclusive award of the Arkansas Workmen's Compensation Commission in a subsequent case on the same cause of action between the same parties.

2. In holding that the findings of the Arkansas Workmen's Compensation Commission on matters in issue, on

the determination of which the Arkansas award was rendered, were not conclusive between the same parties in the subsequent Missouri proceeding.

3. In holding that the award of the Arkansas Workmen's Compensation Commission was excepted from the requirements of Article IV, Section 1 of the Constitution of the United States, because the Arkansas award denied compensation and there was some difference in the Arkansas law and the Missouri law.

Summary of the Argument

I

The respondents filed a claim for compensation before the Arkansas Workmen's Compensation Commission, seeking an award of compensation on account of the death of R. Guy Loudenslager. That proceeding was prosecuted to a final, conclusive award between the parties in Arkansas. Respondents filed another claim for compensation before the Missouri Workmen's Compensation Commission, seeking an award of compensation on account of the death of R. Guy Loudenslager. Petitioners duly pleaded and proved the final, conclusive award of the Arkansas Workmen's Compensation Commission in the proceeding before the Missouri Workmen's Compensation Commission. The Missouri Workmen's Compensation Commission refused to accept the final Arkansas award as conclusive between the parties and again litigated that issue. The Arkansas Workmen's Compensation Commission denied compensation on the finding that the deceased was not an employee, but was an independent contractor. The Missouri Workmen's Compensation Commission entered an award in favor of respondents on the finding that the deceased was an employee.

Article IV, Section 1 of the Constitution of the United States, required that the final, conclusive award of the

Arkansas Workmen's Compensation Commission, when duly pleaded and proven in the subsequent proceeding before the Missouri Workmen's Compensation Commission, be given full faith and credit. The Missouri Workmen's Compensation Commission and the Supreme Court of Missouri denied full faith and credit to the Arkansas award, and held that the issue could be litigated a second time. In so ruling, the judgment of the Supreme Court of Missouri violated Article IV, Section 1 of the Constitution of the United States.

Magnolia Petroleum Co. v. Hunt, 320 U. S. 430, 439, 443, 444, 445.

Roche v. McDonald, 275 U. S. 449, 454, 455.

Christmas v. Russell, 5 Wall 290, 301, 302.

Equitable Life Assur. Soc. of U. S. v. Pool, 145 S. W. (2d) 25, 27 (Ark.)

State ex Rel. v. Fulbright, 169 S. W. (2d) 59 (Mo.)

Rutherford v. Tobin Quarries, 82 S. W. (2d) 918, 923 (Mo.)

Irvan v. Bounds, 170 S. W. (2d) 674, 677 (Ark.)

Maltz v. Jackoway-Katz Cap Co., 82 S. W. (2d) 909, 916 (Mo.)

Article IV, Section 1 of the U. S. Constitution.

Act 319 Laws Arkansas 1939, Section 25 (a).

II

Respondents filed a claim for compensation before the Arkansas Workmen's Compensation Commission to recover compensation on account of the death of R. Guy Loudenslager. That proceeding was prosecuted to a final, conclusive award in Arkansas. Respondents also filed a proceeding before the Missouri Workmen's Compensation Commission to recover on account of the same death. Petitioners duly pleaded and proved the final, conclusive

award of the Arkansas Workmen's Compensation Commission in the Missouri proceeding. The Missouri Workmen's Compensation Commission and the Supreme Court of Missouri refused to give full faith and credit to the final, conclusive Arkansas award; they held the issue determined in the Arkansas proceeding could be again litigated. The parties in both proceedings were the same, and even though the Missouri and Arkansas proceedings were not upon the same cause of action, Article IV, Section 1 of the Constitution of the United States required the Missouri Workmen's Compensation Commission and the Supreme Court of Missouri to give full faith and credit to that award on the matters in issue, upon the determination of which the Arkansas award was entered. The matter in issue, upon the determination of which the Arkansas award was entered, was whether the deceased was an employee or an independent contractor. The Arkansas Commission found that he was not an employee. The Missouri Workmen's Compensation Commission had before it the same issue, and the Missouri Workmen's Compensation Commission found that the deceased was an employee.

Chicago, Rock Island & Pacific Ry. v. Schendel, 270 U. S. 611, 616, 617;

Carpenter v. Strange, 141 U. S. 87, 102, 103;

Gates v. Mortgage Loan & Inv. Agency, 139 S. W. (2d) 19, 23 (Ark.);

State ex rel, v. Fulbright, 169 S. W. (2d) 59 (Mo.)

Rutherford v. Tobin Quarries, 82 S. W. (2d) 918, 923.

Article IV, Section 1 of the U. S. Constitution.

III

Respondents filed a claim for compensation on account of the death of R. Guy Loudenslager before the Arkansas Workmen's Compensation Commission, which was prose-

cuted to a final, conclusive award between the parties in Arkansas. They filed a second action seeking an award of compensation on account of the same death before the Missouri Workmen's Compensation Commission. Petitioners, in their answer before the Missouri Workmen's Compensation Commission, duly pleaded the final, conclusive award of the Arkansas Workmen's Compensation Commission, and on hearing before the Missouri Workmen's Compensation Commission introduced a duly authenticated copy of the final, conclusive award of the Arkansas Commission. The Missouri Supreme Court, in its opinion, held that the final, conclusive award of the Arkansas Workmen's Compensation Commission was excepted from the requirements of Article IV, Section 1 of the Constitution of the United States, and that the Missouri Courts did not have to give it full faith and credit, because the Arkansas award denied compensation and held that the claimants were not entitled to compensation under the Arkansas Act, and because the Missouri Workmen's Compensation Act and the Arkansas Workmen's Compensation Act differed in many respects, and that the finding of the Arkansas Commission, that the claimants were not entitled to compensation under the Arkansas Act, does not mean that they could not be given a remedy therefor by the Missouri Act.

The issue in both proceedings was whether the deceased was an employee or an independent contractor. The Arkansas Workmen's Compensation Commission, after hearing, found that he was not an employee. The Missouri Workmen's Compensation Commission, after hearing, found that he was an employee. Both Acts provided for compensation to respondents under the facts found by the Missouri Workmen's Compensation Commission, and both Acts denied compensation to respondents under the facts found by the Arkansas Workmen's Compensation Commission.

Neither Act provided for compensation on account of the death of an independent contractor.

This Court is the final arbiter of the extent to which full faith and credit must be given to the judgments of a sister-state, and likewise as to what judgments may be excepted from the requirements of full faith and credit. The Arkansas award did not conflict with any public policy of the State of Missouri and, therefore, Article IV, Section 1 of the Constitution of the United States required that the Missouri Courts give full faith and credit to that award. In attempting to except that award from the requirements of full faith and credit, the judgment and opinion of the Supreme Court is brought into conflict and violates Article IV, Section 1 of the Constitution of the United States.

Magnolia Petroleum Co. v. Hunt, 320 U. S. 430, 438;
Williams v. State of North Carolina, 317 U. S. 287, 302;
Riley v. New York Trust Co., 315 U. S. 343, 348;
Milwaukee County v. White Co., 296 U. S. 268, 274;
Chicago, Rock Island & Pacific Ry. v. Schendel, 270 U. S. 611, 616;
Hood v. McGhee, 237 U. S. 611
Olmstead v. Olmstead, 216 U. S. 386;
U. S. v. California & Oregon L. Co., 192 U. S. 355;
Clarke v. Clarke, 178 U. S. 186;
Werlein v. New Orleans, 177 U. S. 390, 398, 399;
Huntington v. Atrill, 146 U. S. 661, 666, 685;
Wisconsin v. Pellican Ins. Co., 127 U. S. 265;
State ex rel. v. Fulbright, 169 S. W. (2d) 59;
Rutherford v. Tobin Quarries, 82 S. W. (2d) 918, 923.

Argument

I

This proceeding grows out of a claim filed December 19th 1941, by respondents before the Missouri Workmen's Com-

pensation Commission, seeking an award of compensation under the Missouri Workmen's Compensation Law on account of the death of R. Guy Loudenslager.

Prior to filing the Missouri claim, respondents, on July 23rd, 1941, filed a claim for compensation before the Arkansas Workmen's Compensation Commission, to recover compensation under the Arkansas Workmen's Compensation Law on account of the same death.

Both claims sought an award of compensation on the ground that R. Guy Loudenslager was an employee under a contract of hire (R. 3-4, 6). Employer's and Insurer's Exhibit 1 (R. 22, 297). The Arkansas proceeding was first prosecuted to an award on February 16th, 1942—Employer's and Insurer's Exhibit 1 (R. 22, 290). No appeal was prosecuted from the Arkansas award—Employer's and Insurer's Exhibit 1 (R. 22, 306), and it became final and conclusive between the parties on March 18th, 1942. Sec. 25 (a), Act 319 Laws of Arkansas 1939 (R. 14, 19).

The Arkansas award was pleaded in the Missouri proceeding (R. 7-11), and a duly authenticated copy of the award and record of the Arkansas Workmen's Compensation Commission was introduced in evidence (R. 22). Petitioners claim that it was the duty of the Missouri Workmen's Compensation Commission to accept this final Arkansas award as conclusively establishing the relationship of deceased to petitioner Jack Gorum, under Article IV, Section 1 of the Constitution of the United States and the Acts of Congress implementing same. 28 U. S. C. A., Sec. 688. Regardless of such proof of the final Arkansas award, the Missouri Workmen's Compensation Commission proceeded to again litigate the issue finally adjudicated by the Arkansas award, and made a finding contrary to that award (R. 232 A-234 A, 234 C-234 D).

The claims filed in these proceedings show that the parties were the same (R. 3-4; Employer's and Insurer's Exhibit 1, R. 22, 297). Respondents had one cause of action on account of the death of R. Guy Loudenslager. *Magnolia Petroleum Co. v. Hunt*, 320 U. S. 443, 444, 445. They could seek their remedy in either Arkansas or Missouri, but having chosen to seek it in Arkansas, where the award was final and conclusive—Act 319 Laws Ark. 1939, Sec. 25 (A) (R. 14, 19), the full faith and credit clause precludes them from again seeking a remedy in Missouri upon the same ground. *Magnolia Petroleum Co. v. Hunt*, 320 U. S. 444.

The rule laid down by the applicable decisions of this Court, in construing Article IV, Section 1 of the Constitution of the United States and the Act of Congress implementing same, is that a final, conclusive judgment of one state, when duly pleaded and proven in a subsequent action, between the same parties on the same cause of action brought in another state, must be given the same force and effect in the second action that it had in the state where rendered, under the principle of *res judicata*.

Christmas v. Russell, 5 Wall. 290, 301, 302.

Magnolia Petroleum Co. v. Hunt, 320 U. S. 430, 439.

Roche v. McDonald, 275 U. S. 449, 454, 455.

The award was conclusive and final between the parties in Arkansas. Act 319 Laws Arkansas 1939, Sec. 25 (b) (R. 14, 19).

Under the rule of *res judicata* in the State of Arkansas, the award conclusively established that deceased was not an employee. *Equitable Life Assur. Soc. of U. S. v. Pool*, 143 S. W. (2d) 25, 27.

The same validity and effect should have been given to the Arkansas award by the Missouri Workmen's Compensation Commission.

Such validity and effect was denied the Arkansas award and the issue was again litigated.

The recognition of the Arkansas award by the Missouri Workmen's Compensation Commission and the granting it full faith and credit would not violate or conflict with any policy of the State of Missouri. This is so because the award of compensation was denied by the Arkansas Workmen's Compensation Commission because it found deceased was not an employee, but was an independent contractor—Employer's and Insurer's Exhibit 1 (R. 22, 296). The policy of Missouri, as shown by its compensation law and decisions construing same, is to deny compensation to independent contractors. *State ex rel. v. Fulbright*, 169 S. W. (2d) 59; *Rutherford v. Tobin Quarries*, 82 S. W. (2d) 918, 923.

Under the facts found by the Arkansas Workmen's Compensation Commission, neither Missouri nor Arkansas law provides for compensation. Under the facts found by the Missouri Workmen's Compensation Commission, both Missouri and Arkansas laws provide for compensation to the widow and child.

It would seem that the only reason why the Missouri Supreme Court and the Missouri Workmen's Compensation Commission were unwilling to grant full faith and credit to the Arkansas award was because they were not agreeable to accepting the finding of fact made by the Arkansas Workmen's Compensation Commission.

Both Arkansas and Missouri apply the same rule of law to determine whether a workman is an employee or an independent contractor. *Irvan v. Bounds*, 170 S. W. (2d) 674, 677; *Maltz v. Jackoway-Katz Cap Co.*, 82 S. W. (2d) 909, 916.

Petitioners submit that the Supreme Court of Missouri violated Article IV, Section 1 of the Constitution of the

United States, and the Act of Congress implementing same, by denying full faith and credit to the Arkansas award, and the judgment of said Court should be reversed.

II

However, if it should be thought that the Arkansas proceeding and the Missouri proceeding were upon different causes of action, the Arkansas award was nevertheless entitled to full faith and credit. The parties were the same—Employer's and Insurer's Exhibit 1 (R. 22, 297, 3-4). The matter in issue, upon the determination of which the Arkansas award was rendered, was whether the deceased was an employee or an independent contractor. The Arkansas Workmen's Compensation Commission found he was not an employee—Employer's and Insurer's Exhibit 1 22, 296). It found he was an independent contractor. It denied compensation on a trial on the merits because of these findings.

If the Arkansas award had been given full faith and credit and the issues there adjudicated had been accepted as final and conclusive, no award of compensation could have been made by the Missouri Workmen's Compensation Commission. *State ex Rel. v. Fulbright*, 169 S. W. (2d) 59; *Rutherford v. Tobin Quarries*, 82 S. W. (2d) 918, 923. This is so because the Missouri Workmen's Compensation Law does not provide compensation for the injury or death of an independent contractor not engaged on or about the premises of the employer.

The parties being the same, the matters in issue, on the determination of which the Arkansas award was rendered, in the first action are conclusive in the second action when pleaded and proven. *Carpenter v. Strange*, 141 U. S. 87, 102, 103; *Chicago, Rock Island & Pacific Ry. Co. v. Schendel*, 270 U. S. 611, 617; *Gates v. Mortgage Loan & Ins.*

Agency, 139 S. W. (2d) 19, 23 (Ark.). Whether deceased was an employee was the matter in issue, on the determination of which both the Arkansas and the Missouri awards were rendered. The issue in both proceedings was the same. *Chicago, R. I. & P. Ry. Co. v. Schendel*, 270 U. S. 616.

Your petitioners, therefore, believe that the judgment of the Supreme Court of Missouri conflicts with the applicable decision of this Court and violates Article IV, Section 1 of the Constitution of the United States.

III

The Supreme Court of Missouri, in its opinion, held that the Arkansas Workmen's Compensation Commission had jurisdiction and that the Arkansas award was not subject to collateral attack (R. 248). Yet said Court refused to give that award full faith and credit (R. 248-9). The opinion of said Court has excepted the Arkansas award from the requirements of full faith and credit. The reasons for excepting this final, conclusive award from the requirement of full faith and credit are stated in the opinion to be because the Arkansas award denied a recovery of compensation, and the Arkansas and Missouri compensation laws differ in many respects, and the right to compensation under the Missouri law was not involved in the Arkansas proceeding, and the right to compensation under the Arkansas law was not involved in the Missouri proceeding. It was not held or contended by the Missouri Supreme Court that the Missouri Workmen's Compensation Law granted respondents any remedy to recover an award of compensation which was not also granted respondents in the Arkansas proceeding under the Arkansas Workmen's Compensation Law.

It is for this Court to determine the extent to which full faith and credit must be given to the judgments and records of the State of Arkansas by the Courts of Missouri, as well as to determine what judgments and records shall be excepted from the requirement of full faith and credit. *Williams v. State of North Carolina*, 317 U. S. 287, 302; *Milwaukee County v. White Co.*, 296 U. S. 268, 274.

It was not thought by this Court, in *Chicago, Rock Island & Pacific Ry. v. Schendel*, *supra*, that the fact that there was a difference between the Iowa Workmen's Compensation Law and the Federal Employers' Liability Act would except the Iowa compensation award from the requirements of full faith and credit. Nor was it thought in the *Schendel* case that the fact that the right to recover damages under the Federal Employers' Liability Act was not involved in the Iowa compensation proceeding, and the right to recover compensation under the Iowa Compensation Law was not involved in the Minnesota proceeding brought under the Federal Employers' Liability Act, created any exception to the requirement of full faith and credit under Article IV, Section 1 of the Constitution of the United States.

Article IV, Section 1 of the Constitution of the United States and the Act of Congress implementing same have made it mandatory for the Courts of Missouri to give the final, conclusive award of the Arkansas Workmen's Compensation Commission the same force and effect it has in Arkansas, when pleaded and proven in the Missouri compensation proceeding, under the principle of *res judicata*. *Magnolia Petroleum Co. v. Hunt*, 320 U. S. 430; *Chicago, R. I. & P. Ry. Co. v. Schendel*, 270 U. S. 611, 616; *Riley v. New York Trust Co.*, 315 U. S. 343, 348.

Under the principle of *res judicata*, this Court held, in *U. S. v. California and Oregon Land Co.*, 192 U. S. 355, that a decree in a former action in favor of defendant, deny-

ing affirmative relief, was *res judicata* in a subsequent action, and a like ruling was made by this Court in *Werlein v. New Orleans*, 177 U. S. 390, 398, 399.

This Court has not seen fit to except a money judgment in a civil suit from the requirements of full faith and credit. *Magnolia Petroleum Co. v. Hunt*, 320 U. S. 430, 438, although some exceptions to the requirements of full faith and credit have been established.

As was observed in *Magnolia Petroleum Co. v. Hunt*, 320 U. S. 430, the exceptions to the requirements of full faith and credit have been few and far between.

Those cases which have been established as exceptions to the requirements of full faith and credit are for the most part cases where an attempt is made to enforce the penal laws of one State in the courts of a sister-State, by use of the requirements of Article IV, Section 1 of the Constitution of the United States. *Wisconsin v. Pellican Ins. Co.*, 127 U. S. 265; *Huntington v. Atrill*, 146 U. S. 661, 666, 685. Or where the effect of full faith and credit will be to allow the courts of one State to control the transfer of real estate located in sister-States. *Clarke v. Clarke*, 178 U. S. 186; *Olmstead v. Olmstead*, 216 U. S. 386; *Hood v. McGhee*, 237 U. S. 611.

Judgments excepted from the requirement of full faith and credit seem to be limited to such judgments, the enforcement of which will seriously conflict with the policy of the State in which their enforcement is sought.

In this case it is impossible to harmonize the two awards. The granting of full faith and credit to the Arkansas award by the Missouri Courts will not do violence to or conflict with any policy of the State of Missouri, because Missouri denies compensation to independent contractors. *State ex rel. v. Fulbright*, 169 S. W. (2d) 59; *Rutherford v. Tobin Quarries*, 82 S. W. (2d) 918, 923.

The judgment and opinion of the Supreme Court of Missouri not only conflicts with applicable decisions of this Court construing Article IV, Section 1 of the Constitution of the United States and the Act of Congress implementing same, it demonstrates a positive policy to deny full faith and credit to all compensation awards which deny compensation. This is true because it will be difficult to find two workmen's compensation laws which do not differ in many respects. This opinion will, if allowed to remain unreversed, stand as a precedent for the Workmen's Compensation Commission of Missouri to deny full faith and credit to all awards of other States which deny compensation. It will no doubt be so construed by the Missouri Workmen's Compensation Commission and will be so applied thereby, resulting in the confusion and disrespect for the law which the full faith and credit provision of the Constitution was adopted to eliminate.

In Conclusion

In conclusion, your petitioners earnestly urge that the question here presented does not grow out of any conflict between the Workmen's Compensation Law of the State of Arkansas and the Workmen's Compensation Law of the State of Missouri, because both the Arkansas Workmen's Compensation Law and the Missouri Workmen's Compensation Law provide for an award of compensation to the widow and child of a deceased employee whose death results from an accidental injury arising out of and in the course of his employment, and both Workmen's Compensation Laws deny an award of compensation for the death of an independent contractor from accidental injuries arising out of and in the course of his work while driving a truck along a public highway, as R. Guy Loudenslager was doing in this case. Neither does the question here involved arise out of any conflict or difference between the

public policy of the State of Arkansas and the State of Missouri in reference to granting of compensation to employees. This is so because it is the policy of both States to deny compensation to the widow and child of a deceased workman under the facts found by the Arkansas Workmen's Compensation Commission, and it is the policy of both States to grant compensation to the widow and child of a deceased employee under the facts found by the Missouri Workmen's Compensation Commission. From this it appears that the question here results solely from the fact that the Arkansas Workmen's Compensation Commission believed from the evidence, after the hearing on the merits, that the deceased was not an employee, and because the Missouri Workmen's Compensation Commission refused to accept that final award as conclusive and again adjudicated the same issue. The same rule of law is applied in both Arkansas and Missouri in determining who is an employee under the Workmen's Compensation Laws of these States. It is not enough that the Courts of Missouri disagree with the finding of fact by the Arkansas Workmen's Compensation Commission to base a denial of full faith and credit to the final award of the Arkansas Workmen's Compensation Commission on that ground.

Your petitioners, therefore, respectfully urge that the writ of certiorari prayed for should be issued, to the end that this Court may review the judgment of the Supreme Court of the State of Missouri in this case.

Respectfully submitted,

JOSEPH N. HASSETT,
Attorney for Petitioners,
 412 Paul Brown Bldg.,
 St. Louis 1, Mo.